

MEMORANDUM

Agenda Item No. 4(O)

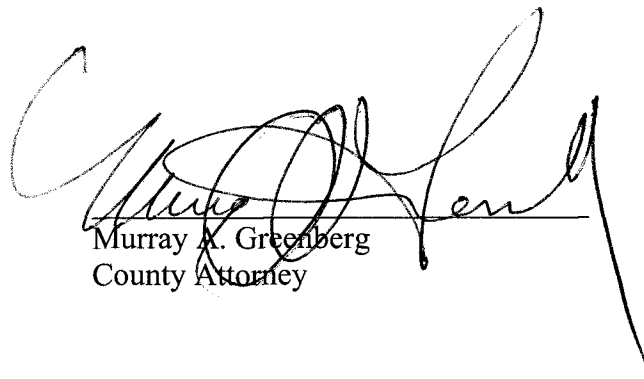
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: March 7, 2006

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Ordinance amending
Section 2-8.9 of the Code
relating to the Living Wage
Ordinance to refine health
benefit eligibility
requirements

The accompanying ordinance was prepared and placed on the agenda at the request of Commissioner Natacha Seijas.



Murray A. Greenberg
County Attorney

MAG/bw



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: March 7, 2006

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 4(O)

Please note any items checked.

- _____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- _____ 6 weeks required between first reading and public hearing
- _____ 4 weeks notification to municipal officials required prior to public hearing
- _____ Decreases revenues or increases expenditures without balancing budget
- _____ Budget required
- _____ Statement of fiscal impact required
- _____ Bid waiver requiring County Manager's written recommendation
- _____ Ordinance creating a new board requires detailed County Manager's report for public hearing
- _____ Housekeeping item (no policy decision required)
- _____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(O)

3-7-06

ORDINANCE NO. _____

ORDINANCE AMENDING SECTION 2-8.9 OF THE CODE OF MIAMI-DADE COUNTY (THE LIVING WAGE ORDINANCE) TO REFINE HEALTH BENEFIT ELIGIBILITY REQUIREMENTS; REMOVING MINIMUM APPLICABILITY THRESHOLD FOR COUNTY SERVICE CONTRACTS; AUTHORIZING ADDITIONAL PENALTIES FOR NON-COMPLIANCE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, the Board of County Commissioners on May 11, 1999, enacted Ordinance 99-44 establishing a Living Wage requirement for specified County service contracts, specified permittees and for County employees, which was codified in the County Code as Section 2-8.9 ("Living Wage Ordinance"); and

WHEREAS, the Board of County Commissioners in the Living Wage Ordinance established an advisory board known as the Living Wage Commission to make recommendations to the Board of County Commissioners regarding the effectiveness of the Living Wage Ordinance; and

WHEREAS, after much discussion by the Living Wage Commission Advisory Board, it is apparent that refining the health benefits requirements and penalties for non-compliance will strengthen the effectiveness of the Living Wage Ordinance,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-8.9 of the Code of Miami-Dade County, Florida, is hereby amended as follows:¹

Sec. 2-8.9. Living Wage Ordinance For County Service Contracts and County Employees.

DEFINITIONS

* * *

(F) "Covered Services" are any one (1) of the following:

(1) County Service Contracts

Contracts awarded by the County ~~[[that involve a total contract value of over \$100,000 per year]]~~ for the following services:

- (i) food preparation and/or distribution;
- (ii) security services;
- (iii) routine maintenance services such as custodial, cleaning, refuse removal, repair, refinishing, and recycling;
- (iv) clerical or other non-supervisory office work, whether temporary or permanent;
- (v) transportation and parking services including airport and seaport services;
- (vi) printing and reproduction services; and,
- (vii) landscaping, lawn, and/or agricultural services.

* * *

¹ Words stricken through and/or ~~[[double bracketed]]~~ shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

LIVING WAGE

(A) Living Wage Paid

(1) Service contractors.

All Service Contractors as defined by this Chapter, including >>Service Contractors at Aviation Department Facilities<< ~~[[MIA General Aeronautical Service Permittees]]~~ (subject to restrictions if any applicable to such permit), performing Covered Services ~~[[with Miami Dade County]]~~ shall pay to all of its employees providing Covered Services, a Living Wage of no less than \$8.56 per hour with a health >>benefit plan<< ~~[[benefits]]~~ as described in this section, or otherwise \$9.81 per hour, >>or the current rate for the given year in the manner provided for herein for the adjustment of the Living Wage rate<<.

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(B) Health >>Benefit Plan<< ~~[[Benefits]]~~.

>>(1)<< For a Covered Employer or the County to comply with the Living Wage provision by choosing to pay the lower wage scale available when a Covered Employer also provides >a<< Health Benefit >>Plan<<, such Health Benefit >>Plan<< shall consist of payment of at least \$1.25 per hour towards the provision of a >>Health Benefit Plan<< ~~[[health care benefits]]~~ for employees and >>, if applicable,<< their dependents. ~~[[If the health benefit plan of a covered employer or the County requires an initial period of employment for a new employee to be eligible for health benefits (eligibility period) such covered employer or the County may qualify to pay the \$8.56 per hour wage scale during a new employee's initial eligibility period provided the new employee will be paid health benefits upon completion of the eligibility period.]]~~. >>The minimum amount of payment by a Service Contractor for the provision of a Health Benefit Plan on a per-hour basis will be calculated based on a maximum of a 40-hour work week. Overtime hours will not require additional payments towards the provision of a Health Benefit Plan. If the Service Contractor pays less than the required amount for providing a Health Benefit Plan provided in this section, then the Service Contractor may comply with the Living Wage requirements by paying the difference between the premium it pays for the Health Benefit Plan of the Covered Employee and the minimum amount required by this section for a qualifying Health Benefit Plan. The Service Contractor may require that

all employees enroll in a Health Benefit Plan offered by the Service Contractor.<< Proof of the provision of a Health >>Benefit Plan<< [[Benefits]] must be submitted to the awarding authority to qualify for the wage rate for employees with a Health Benefit Plan. [[health-benefits]]. >>Health Benefit Plan for purposes of complying with this section shall qualify if it includes the benefits contained in a standard health benefit plan meeting the requirements set forth in §627.6699(12)(a) Florida Statutes.<<

>>(2) To the extent a Covered Employer seeks to pay the lower Living Wage rate for employers providing a qualifying Health Benefit Plan during the initial eligibility period applicable to new employees, the Living Wage requirement may be complied with as follows during the eligibility period:

- (a) Provided the Covered Employer will be providing a qualifying Health Benefit Plan to a new employee upon the completion of such employee's eligibility period required under the Covered Employer's Health Benefit Plan and the Covered Employer has taken the necessary steps to effectuate coverage for such employee, a Covered Employer may only qualify to pay the Living Wage rate applicable to employees with a Health Benefit Plan for a term not to exceed the first ninety (90) days of the new initial employee's eligibility period, said term commencing on the employee's date of hire.
- (b) If the Covered Employee is not provided with a qualifying Health Benefit Plan within ninety (90) days of initial hire, then the Covered Employer commencing on the ninety first (91st) day of the new employee's initial eligibility period, must commence to pay the applicable Living Wage rate for Covered Employees without a Health Benefit Plan and must retroactively pay the Covered Employee the difference between the two Living Wage rates for the term of the eligibility period.<<

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COMPLIANCE AND ENFORCEMENT

- (A) **Service Contractor to Cooperate.** The Service Contractor shall permit County employees, agents, or representatives to observe work being performed at, in, or on the project or matter for which the Service Contractor has a contract. The County representatives may examine the books and records

of the Service Contractor relating to employment and payroll to determine if the Service Contractor is in compliance with the provisions of this Chapter.

- (B) **Complaint Procedures and Sanctions.** An employee who believes that this Chapter applies or applied to him or her and the Service Contractor is or was not complying with the requirements of this Chapter has a right to complain by filing a written complaint. The County Manager shall establish by Administrative Order the procedures and requirements for filing a complaint and for the processing and resolution of complaints under this Ordinance including the sanctions to be imposed for violations of this Ordinance. The County Manager shall also by Administrative Order establish a procedure applicable to complaints by County employees regarding non-compliance with this Ordinance.
- (C) **Private Right of Action Against Service Contractors.** Any Covered Employee of a Service Contractor, or any person who was formerly a Covered Employee of a Service Contractor, may instead of the County administrative procedure set forth in this Ordinance but not in addition to such procedure, bring an action by filing suit against the Covered Employer in any court of competent jurisdiction to enforce the provisions of this Chapter and may be awarded back pay, benefits, attorney's fees, and costs. The applicable statute of limitations for such a claim will be two (2) years as provided in Florida Statutes section 95.11(4)(c) in an action for payment of wages. The court may also impose sanctions on the employer, including those persons or entities aiding or abetting the employer, to include wage restitution to the affected employee and damages payable to the Covered employee in the sum of up to \$500 for each week each employer is found to have violated this Chapter.
- (D) **Sanctions Against Service Contractors.** For violations of this Ordinance as determined pursuant to the procedures set forth by Administrative Order, the County may sanction a Service Contractor for violations of this Ordinance by requiring the Service Contractor to pay wage restitution to the affected employee. The County may also sanction the Service Contractor in at least one of the following additional ways:

- (1) Damages payable to the County in the sum of up to \$500 for each week for each Covered Employee found to have not been paid in accordance with this Chapter;
 - (2) The County may suspend or terminate payment under the contract or terminate the contract with the Service Contractor;
 - (3) The County may declare the Covered Employer ineligible for future service contracts for three (3) years or until all penalties and restitution have been paid in full, whichever is longer. In addition all employers shall be ineligible under this section where principal officers of the employer were principal officers of an employer who has been declared ineligible under this Chapter; and.
 - (4) All such sanctions recommended or imposed shall be a matter of public record.
- >>(5) A Service Contractor who fails to respond to a notice of noncompliance, fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by DBD after a Compliance Meeting shall be deemed not to have complied with the requirements of this section as stated in the notice or determination of non-compliance and, in the case of underpayment of the Living Wage required, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the employee and the Service Contractor may be fined the applicable penalty for such underpayment as follows. In the case of underpayment of the required Living Wage rate, the amount equal to the amount of such underpayment may be withheld from the Service Contractor and remitted to the employee and in addition, the Service Contractor may also be fined for such noncompliance as follows:

- (A) for the first underpayment, a penalty in an amount equal to 10% of the amount
- (B) for the second underpayment, a penalty in an amount equal to 20% thereof;
- (C) for the third and successive underpayments, a penalty in an amount equal to 30% thereof.
- (D) A fourth violation, shall constitute a default of the subject contract and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray DBD's costs of administering the Living Wage provisions. If the required payment is not made within a reasonable period of time, the noncomplying Service Contractor and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County Living Wage contracts for a period of three (3) years.<<

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may

be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:




Prepared by:

Eric A. Rodriguez

Sponsored by Commissioner Natacha Seijas